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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID HA,

Defendant and Appellant.

H034716

(Santa Clara County  
Super. Ct. No. CC827453)

**I. INTRODUCTION**

Defendant David Ha pleaded no contest to first degree burglary (Pen. Code, §§ 459, 460, subd. (a))<sup>1</sup> and admitted the allegation that a person not an accomplice was present at the time of the burglary (§ 667.5, subd. (c)(21).) The trial court suspended imposition of sentence and placed defendant on probation for three years.

Defendant filed a timely notice of appeal, and we appointed counsel to represent him in this court. Appointed counsel has filed an opening brief that states the case and facts but raises no issue. We notified defendant of his right to submit written argument on his own behalf within 30 days. The 30-day period has elapsed and we have received no response from defendant.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the entire record. Following the California Supreme Court's direction in *People v. Kelly, supra*, 40 Cal.4th at page 110, we provide "a brief description of the . . . procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed."

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

The victim, Alyssa, stayed home from school on December 2, 2008, because she was sick. At about 9:30 a.m., Alyssa was alone in the house when she heard the doorbell ring. She looked outside and saw a man she did not recognize standing on the front porch and ringing the doorbell. Alyssa did not answer the door. She stayed in her bedroom but then heard the doorbell ring a second time. Alyssa next heard the sound of someone breaking into the house.

After telephoning her mother, Alyssa looked out her bedroom door and saw defendant and his codefendant, Daoud M. Zazai, walking down the hallway. Alyssa yelled " 'What are you doing' " and the two men fled the house. During the police investigation of the incident, Alyssa identified defendant and Zazai from a photo line-up. When defendant was questioned by a police officer, he admitted that he and Zazai had decided to break into the house, which they entered first through the garage and then by " 'kicking in' " a door leading to the kitchen.

A criminal complaint was filed on December 5, 2008, that charged defendant with first degree burglary (§§ 459, 460, subd. (a); count 1) and also alleged that a person not an accomplice was present at the time of the burglary (§ 667.5, subd. (c)(21).) After a preliminary hearing held on April 8, 2009, defendant was held to answer on count 1 and the special allegation.

Defendant subsequently entered into a plea agreement in which he agreed to plead no contest to one count of first degree burglary and admit the special allegation in exchange for a promise of no state prison, a one-year jail sentence "top," and eligibility

for all programs. At the sentencing hearing held on August 31, 2009, the trial court suspended imposition of sentence and placed defendant on probation for three years. The conditions of probation included, among other things, a jail sentence of 270 days. The court also ordered defendant to pay a \$220 restitution fine (§1202.4), suspended the imposition of a \$220 parole revocation restitution fine (§ 1202.45), and additionally ordered defendant to pay a court security fee of \$30 (§ 1465.8, subd.(a)(1)), a criminal justice administration fee of \$129.75 (Gov. Code, § 29550.2) and a criminal conviction assessment of \$30 (Gov. Code, § 70373).

On September 11, 2009, defendant filed a timely notice of appeal. Having carefully reviewed the entire record, we conclude that there are no arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-443.)

### **III. DISPOSITION**

The judgment is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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MIHARA, J.

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MCADAMS, J.